IN THE UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION

FRESHUB, INC., a Delaware Corporation, and FRESHUB, LTD., an Israeli Limited Liability Company,	)))	Case No. 1:19-cv-00885-ADA
	)	
Plaintiffs,	)	
vs.	)	
	)	
AMAZON.COM, INC., a Delaware Corporation, AMAZON DIGITAL SERVICES, LLC, a Delaware Limited Liability Company, PRIME NOW, LLC, a Delaware Limited Liability Company, and WHOLE FOODS MARKET SERVICES, INC., a Delaware Corporation,	)))))))	
	)	
Defendants.	)	

JOINT CLAIM CONSTRUCTION STATEMENT

Pursuant to the Court's Order Governing Proceedings (Dkt. No. 40), Plaintiffs Freshub, Inc. and Freshub, Ltd. (collectively, "Freshub") and Defendants Amazon.com, Inc., Amazon Digital Services, LLC, Prime Now, LLC, and Whole Foods Market Services, Inc. (collectively, "Defendants") submit this Joint Claim Construction Statement. The claim terms identified below are found in U.S. Patent No. 9,908,153 (the "'153 Patent"); U.S. Patent No. 10,239,094 (the "'094 Patent"); U.S. Patent No. 10,232,408 (the "'408 Patent"); and U.S. Patent No. 10,213,810 (the "'810 Patent") (collectively, "Asserted Patents").

I.   AGREED CONSTRUCTIONS AND REQUEST FOR DETERMINATION AS PART OF *MARKMAN* PROCESS

Claim Terms	Asserted Patent(s) and Asserted Claim(s)	Agreed Construction
increase recognition accuracy	'153 Patent, Cl. 9 '810 Patent, Cls. 5, 6 '408 Patent, Cls. 5, 6	improve the likelihood of correctly identifying the item

II.   DISPUTED CLAIM TERMS

"Placing More Weight on Words"		
Claim Terms	Freshub's Position	Defendants' Position
placing more weight on words ('153 Patent, Cl. 9; '094 Patent, Cl. 21; '810 Patent, Cls. 5, 6; '408 Patent, Cls. 5, 6)	assigning weight to words based on user's preferences, the type of item in the spoken order, or the user's purchase history	Indefinite pursuant to § 112, ¶ 2

Claim 20 of the ''094 Patent		
Claim Terms	**Freshub's Position**	**Defendants' Position**
the first system ('094 Patent, Cl. 20)	Definite	Indefinite Under § 112, ¶ 2
the first computer system ('094 Patent, Cl. 20)	Definite	Indefinite Under § 112, ¶ 2
the second computer system ('094 Patent, Cl. 20)	Definite	Indefinite Under § 112, ¶ 2

Instructions Elements[12]		
Claim Terms	**Freshub's Position**	**Defendants' Position**
instructions that when executed by the second computer cause the computer system to perform operations comprising: . . . translate at least a portion of the digitized order to text ('153 Patent, Cl. 1)	Non-transitory memory storing computer instructions provides sufficient structure, thus the presumption against application of § 112, ¶ 6 is not overcome Alternatively, if found subject to § 112, ¶ 6: <u>Function:</u> translate at least a portion of the digitized order to text <u>Structure:</u> the computer system programmed to perform one or more of the algorithms disclosed at Dkt. No. 27-2 ('153 Patent) at 8:36-38, 14:12-15, 14:15-17, or the step of 806 disclosed at Fig. 8.	Indefinite; Indefinite; subject to § 112, ¶ 6 <u>Function:</u> "translate at least a portion of the digitized order to text" No structure

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[1] Defendants object to Freshub's inclusion of any alternative positions for these terms and specifically to Freshub's belated identification of functions and structures, which it did not do until its Responsive Claim Construction Brief, in violation of the Order Governing Proceedings, D.I. 40, at 7 (setting forth schedule for exchanging positions on claim constructions). Further, Defendants object to the arguments Freshub insisted on including in this joint submission including its post-briefing arguments regarding the purported completeness of terms identified by defendants for construction and the purported legal standards governing application of § 112, ¶ 6.

[2] Freshub objects to Defendants' selective omission of claim language, which renders the claim language identified in this chart incomplete. First, Defendants omit "non-transitory memory that stores" the instructions referred to for all claims in this chart. Second, Defendants omit the claim language "use the text, translated from the digitized order, to" for the identification element of Claim 1 of the '810 Patent. Third, Defendants omit the claim language "based at least in part on the identified match of the text translated from the digitized order to the text description stored in a database" for the identification element of Claim 1 of the '408 Patent. Fourth, Defendants omit the claim language "based at least in part on the unique product identifier associated with the text description matched to the text translated from the digitized voice communication" for the identification element of Claim 30 of the '408 Patent. The claim elements at issue should be considered in their entirety.

Instructions Elements[12]		
Claim Terms	**Freshub's Position**	**Defendants' Position**
instructions that when executed by the second computer cause the computer system to perform operations comprising: . . . identify an item corresponding to the text ('153 Patent, Cl. 1)	Non-transitory memory storing computer instructions provides sufficient structure, thus the presumption against application of § 112, ¶ 6 is not overcome Alternatively, if found subject to § 112, ¶ 6: Function: identify an item corresponding to the text Structure: the computer system programmed to perform one or more of the algorithms disclosed at Dkt. No. 27-2 ('153 Patent) 8:47-49, 8:56-59, 8:65-9:1, or 14:32-34.	Indefinite; subject to § 112, ¶ 6 Function: "identify an item corresponding to the text" No structure
instructions that when executed by the first computer cause the first system to perform operations comprising: . . . translate at least a portion of the digitized spoken order to text ('094 Patent, Cl. 20)	Non-transitory memory storing computer instructions provides sufficient structure, thus the presumption against application of § 112, ¶ 6 is not overcome Alternatively, if found subject to § 112, ¶ 6: Function: translate at least a portion of the digitized spoken order to text Corresponding Structure: the first computer system programmed to perform one or more of the algorithms disclosed at Dkt. No. 27-6 ('094 Patent) at 8:36-38, 14:21-24, 14:24-26, or the step of 806 disclosed at Fig. 8.	Indefinite; subject to § 112, ¶ 6 Function: "translate at least a portion of the digitized spoken order to text" No structure

Instructions Elements[12]		
Claim Terms	**Freshub's Position**	**Defendants' Position**
instructions that when executed by the first computer cause the first system to perform operations comprising: . . . match the text, translated from the digitized spoken order, to text descriptions of items, wherein the text descriptions of items are stored in a data store ('094 Patent, Cl. 20)	Non-transitory memory storing computer instructions provides sufficient structure, thus the presumption against application of § 112, ¶ 6 is not overcome Alternatively, if found subject to § 112, ¶ 6: <u>Function:</u> match the text, translated from the digitized spoken order, to a text description of items, wherein the text descriptions of items are stored in a data store <u>Corresponding Structure:</u> the first computer system programmed to perform one or more of the algorithms disclosed at Dkt. No. 27-6 ('094 Patent) at 8:43-47, 8:49-53, or 14:39-43.	Indefinite; subject to § 112, ¶ 6 <u>Function:</u> "match the text, translated from the digitized spoken order, to text descriptions of items, wherein the text descriptions of items are stored in a data store" No structure

Instructions Elements[12]		
Claim Terms	**Freshub's Position**	**Defendants' Position**
instructions that when executed by the first computer cause the first system to perform operations comprising: . . . based on at least an identified match, identify a corresponding item ('094 Patent, Cl. 20)	Non-transitory memory storing computer instructions provides sufficient structure, thus the presumption against application of § 112, ¶ 6 is not overcome Alternatively, if found subject to § 112, ¶ 6: Function: based on at least an identified match, identify a corresponding item Corresponding Structure: the first computer system programmed to perform one or more of the algorithms disclosed at Dkt. No. 27-6 ('094 Patent) at 8:47-49, 8:56-59, 8:65-9:1, or 14:42-43.	Indefinite; subject to § 112, ¶ 6 Function: "identify a corresponding item" No structure
instructions that when executed by the computer cause the computer to perform operations comprising: . . . translate at least a portion of the digitized order to text ('810 Patent, Cl. 1)	Non-transitory memory storing computer instructions provides sufficient structure, thus the presumption against application of § 112, ¶ 6 is not overcome Alternatively, if found subject to § 112, ¶ 6: Function: translate at least a portion of the digitized order to text Corresponding Structure: the computer system programmed to perform one or more of the algorithms disclosed at Dkt. No. 27-4 ('810 Patent) at 8:36-38, 14:13-16, 14:16-18, or the step of 806 disclosed at Fig. 8.	Indefinite; subject to § 112, ¶ 6 Function: "translate at least a portion of the digitized order to text" No structure

Instructions Elements[12]		
Claim Terms	**Freshub's Position**	**Defendants' Position**
instructions that when executed by the computer cause the computer to perform operations comprising: . . . identify an item corresponding to the text description ('810 Patent, Cl. 1)	Non-transitory memory storing computer instructions provides sufficient structure, thus the presumption against application of § 112, ¶ 6 is not overcome Alternatively, if found subject to § 112, ¶ 6: Function: use the text, translated from the digitized order, to identify an item corresponding to the text description Corresponding Structure: the computer system programmed to perform one or more of the algorithms disclosed at Dkt. No. 27-4 ('810 Patent) at 8:47-49, 8:56-59, 8:65-9:1, or 14:34-35.	Indefinite; subject to § 112, ¶ 6 Function: "identify an item corresponding to the text description" No structure
instructions that when executed by the computer cause the computer to perform operations comprising: . . . translate at least a portion of the digitized order to text ('408 Patent, Claim 1)	Non-transitory memory storing computer instructions provides sufficient structure, thus the presumption against application of § 112, ¶ 6 is not overcome Alternatively, if found subject to § 112, ¶ 6: Function: translate at least a portion of the digitized order to text Corresponding Structure: the computer system programmed to perform one or more of the algorithms disclosed at Dkt. No. 27-5 ('408 Patent) at 8:36-38, 14:12-15, 14:15-17, or the step of 806 disclosed at Fig. 8.	Indefinite; subject to § 112, ¶ 6 Function: "translate at least a portion of the digitized order to text" No structure

Instructions Elements[12]		
Claim Terms	**Freshub's Position**	**Defendants' Position**
instructions that when executed by the computer cause the computer to perform operations comprising: . . . match the text, translated from the digitized order, to a text description stored in a database comprising text descriptions of items and associated unique product identifiers ('408 Patent, Claim 1)	Non-transitory memory storing computer instructions provides sufficient structure, thus the presumption against application of § 112, ¶ 6 is not overcome Alternatively, if found subject to § 112, ¶ 6: Function: match the text, translated from the digitized order, to a text description stored in a database comprising text descriptions of items and associated unique product identifiers Corresponding Structure: the computer system programmed to perform one or more of the algorithms disclosed at Dkt. No. 27-5 ('408 Patent) at 8:43-47, 8:49-53, or 14:30-34.	Indefinite; subject to § 112, ¶ 6 Function: "match the text, translate from the from the digitized order, to a text description stored in a database comprising text descriptions of items and associated unique product identifiers" No structure

Instructions Elements[12]		
Claim Terms	**Freshub's Position**	**Defendants' Position**
instructions that when executed by the computer cause the computer to perform operations comprising: . . . identify an item corresponding to the text description ('408 Patent, Claim 1)	Non-transitory memory storing computer instructions provides sufficient structure, thus the presumption against application of § 112, ¶ 6 is not overcome Alternatively, if found subject to § 112, ¶ 6: Function: based at least in part on the identified match of the text translated from the digitized order to the text description stored in a database, identify an item corresponding to the text description Corresponding Structure: the computer system programmed to perform one or more of the algorithms disclosed at Dkt. No. 27-5 ('408 Patent) at 8:47-49, 8:56-59, 8:65-9:1, or 14:33-34.	Indefinite; subject to § 112, ¶ 6 Function: "identify an item corresponding to the text description" No structure

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Instructions Elements[12]		
Claim Terms	**Freshub's Position**	**Defendants' Position**
instructions that when executed by a computer cause the computer to perform operations comprising: . . . translate at least a portion of the digitized voice communication to text ('408 Patent, Claim 30)	Non-transitory memory storing computer instructions provides sufficient structure, thus the presumption against application of § 112, ¶ 6 is not overcome Alternatively, if found subject to § 112, ¶ 6: <u>Function:</u> translate at least a portion of the digitized voice communication to text <u>Corresponding Structure:</u> the computer system programmed to perform one or more of the algorithms disclosed at Dkt. No. 27-5 ('408 Patent) at 8:36-38, 14:12-15, 14:15-17, or the step of 806 disclosed at Fig. 8.	Indefinite; subject to § 112, ¶ 6 <u>Function:</u> "translate at least a portion of the digitized voice communication to text" No structure

Instructions Elements[12]		
Claim Terms	**Freshub's Position**	**Defendants' Position**
instructions that when executed by a computer cause the computer to perform operations comprising: . . . match the text, translated from the digitized voice communication, to a text description associated with a unique product identifier, wherein the text description is accessed from a data store ('408 Patent, Claim 30)	Non-transitory memory storing computer instructions provides sufficient structure, thus the presumption against application of § 112, ¶ 6 is not overcome Alternatively, if found subject to § 112, ¶ 6: Function: match the text, translated from the digitized voice communication, to a text description associated with a unique product identifier, wherein the text description is accessed from a data store Corresponding Structure: the computer system programmed to perform one or more of the algorithms disclosed at Dkt. No. 27-5 ('408 Patent) at 8:43-47, 8:49-53, or 14:30-34.	Indefinite; subject to § 112, ¶ 6 Function: "match the text, translated from the digitized voice communication, to a text description associated with a unique product identifier, wherein the text description is accessed from a data store" No structure

Instructions Elements[12]		
Claim Terms	**Freshub's Position**	**Defendants' Position**
instructions that when executed by the computer cause the computer to perform operations comprising: . . . identify an item corresponding to the text ('408 Patent, Claim 30)	Non-transitory memory storing computer instructions provides sufficient structure, thus the presumption against application of § 112, ¶ 6 is not overcome Alternatively, if found subject to § 112, ¶ 6: <u>Function:</u> based at least in part on the unique product identifier associated with the text description matched to the text translated from the digitized voice communication, identify an item corresponding to the text <u>Corresponding Structure:</u> the computer system programmed to perform one or more of the algorithms disclosed at Dkt. No. 27-5 ('408 Patent) at 8:47-49, 8:56-59, 8:65-9:1, or 14:33-34.	Indefinite; subject to § 112, ¶ 6 <u>Function:</u> "identify an item corresponding to the text" No structure

Method Claims[3]		
Claim Terms	**Freshub's Position**	**Defendants' Position**
translating, using a translation module executed by the second computer system, at least a portion of the digitized spoken order to text ('094 Patent, Cl. 1)	Method claims do not recite means or a step, translation module provides sufficient structure, and thus the presumption against application of § 112, ¶ 6 is not overcome Alternatively, if found subject to § 112, ¶ 6: <u>Function</u>: translating … at least a portion of the digitized spoken order to text <u>Corresponding Structure</u>: the translation module of the second computer system programmed to perform one or more of the algorithms at Dkt. No. 27-6 ('094 Patent) at 8:36-38, 14:21-24, 14:24-26, or the step at 806 at Fig. 8	Indefinite; subject to § 112, ¶ 6 <u>Function</u>: translating, using a translation module executed by the second computer system, at least a portion of the digitized spoken order to text" No structure

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[3] Defendants object to Freshub's inclusion of any alternative positions for these terms and specifically to Freshub's belated identification of functions and structures, which it did not do until its Responsive Claim Construction Brief, in violation of the Order Governing Proceedings, D.I. 40, at 7 (setting forth schedule for exchanging positions on claim constructions). Further, Defendants object to the arguments Freshub insisted on including in this joint submission including its post-briefing arguments regarding the purported legal standards governing application of § 112, ¶ 6.

Method Claims[3]		
Claim Terms	**Freshub's Position**	**Defendants' Position**
translating, using a processing system comprising at least one processing device and configured to perform translation of voice orders to text, at least a portion of the digitized order to text ('408 Patent, Cl. 20)	Method claims do not recite means or a step, processing system comprising at least one processing device and configured to perform translation of voice orders to text provides sufficient structure, and thus the presumption against application of § 112, ¶ 6 is not overcome Alternatively, if found subject to § 112, ¶ 6: <u>Function</u>: translating … at least a portion of the digitized order to text <u>Corresponding Structure</u>: the processing system programmed to perform one or more of the algorithms disclosed at Dkt. No. 27-5 ('408 Patent) at 8:36-38, 14:12-15, 14:15-17, or the step of 806 disclosed at Fig. 8.	Indefinite; subject to § 112, ¶ 6 <u>Function:</u> "translating, using a processing system comprising at least one processing device and configured to perform translation of voice orders to text, at least a portion of the digitized order to text" No structure

Method Claims[3]		
Claim Terms	**Freshub's Position**	**Defendants' Position**
matching, using the processing system, the text, translated from the digitized order, to a text description associated with a unique product identifier ('408 Patent, Cl. 20)	Method claims do not recite means or a step, processing system comprising at least one processing device and configured to perform translation of voice orders to text provides sufficient structure, thus the presumption against application of § 112, ¶ 6 is not overcome Alternatively, if found subject to § 112, ¶ 6: <u>Function</u>: matching … the text, translated from the digitized order, to a text description associated with a unique product identifier <u>Corresponding Structure</u>: the processing system programmed to perform translation of voice orders to text, programmed to perform one or more of the algorithms disclosed at Dkt. No. 27-5 ('408 Patent) at 8:43-47, 8:49-53, or 14:30-34.	Indefinite; subject to § 112, ¶ 6 <u>Function:</u> "matching, using the processing system, the text, translated from the digitized order, to a text description associated with a unique product identifier" No structure

III.   CLAIM CONSTRUCTION HEARING

The parties do not request any modifications to the claim construction hearing procedure

set forth in the Court's Order Governing Proceedings. *See* Dkt. No. 40 at 3.

IV.   WITNESSES, INCLUDING EXPERTS, FOR THE CLAIM CONSTRUCTION HEARING

The parties do not believe expert testimony is necessary for the claim construction

hearing. Freshub does not believe a live or pre-recorded tutorial is necessary for the claim

construction hearing. Defendants may provide a pre-recorded tutorial in advance of the claim construction hearing. No tutorial information has been submitted with this Joint Claim Construction Statement.

V.   OTHER ISSUES

The parties agree they do not have any other issues that need to be taken up at a prehearing conference prior to the claim construction hearing or at the claim construction hearing.

<div style="text-align: center;">Respectfully submitted,</div>

Dated: March 6, 2020

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PRIME NOW, LLC, and
WHOLE FOODS MARKET SERVICES, INC.

CERTIFICATE OF SERVICE

I hereby certify that on the 6th day of March 2020, I electronically filed the foregoing

document with the Clerk of the U.S. District Court for the Western District of Texas using the

Court's CM/ECF system, which will transmit notice to the attorneys of record.

/s/ J. David Hadden
J. David Hadden